

### REMARKS

Examiner has rejected Claims 1, 2, 5 and 6 under 35 U.S.C. § 102(b) as being anticipated by *Morris* (5,285,924) and by *Shock* (5,351,853). In response thereto, Applicant has amended Claim 1, and respectfully traverses Examiner's rejection.

Similar to Examiner's previous reference, *Jamieson* ('830), both *Morris* ('924) and *Shock* (5,351,853) do teach an apparatus for covering an opening in a can. However, also just like *Jamieson* ('830), *Morris* ('942) and *Shock* ('853) do not utilize, anticipate, teach or render obvious a can sealing apparatus that fits down into the opening in the top of a can, **creating a seal irrespective of whether a can tab is upwardly extended, or completely removed.** Just as in *Jamieson* ('830), the caps of *Morris* ('942) and *Shock* ('853), as referenced by Examiner, can only be used via a slidable relationship with the can tab. That is, unlike Applicant's invention, neither *Morris* ('942) nor *Shock* ('853) offer any solution capable of sealing a can wherein the can tab is upwardly extended, because both *Morris* ('942) and *Shock* ('853) MUST slidably engage the can tab. See respectively, Col. 3, lines 16-17, "The cover 20 is mounted onto container 10 by **slipping** tab 22 **under** tab opener 16...;" Col. 3, line 13, "the ramp portion 36 of tab 22 is **slid under** tab opener 16...;" and Col. 4, lines 51-55, "A front notch 55 is defined between two forwardly extending tongues 65,67.

*During installation, a tongue passes on each side of the tab rivet..."* Thus, if the can tab is extended, or removed, the devices of *Morris* ('942) and *Shock* ('853) are unable to be installed because of the inability to slidably mount under the can tab.

The configuration and operation of both *Morris* ('942) and *Shock* ('853), like that of *Jamieson* ('830), are unlike Applicant's device, wherein Applicant's cap may be secured to the can only after opening, may be secured to the can even if the can tab is in a vertical position relative to the can lid surface, and may be sealably secured even if the can tab has been completely removed. *Morris* ('942) and *Shock* ('853), respectively, rely upon the slidable engagement of the cap with the can tab in order to "provide a better seal" and "to maintain cover in a proper alignment with the container.," *Morris*, Col 3., lines 23-26, by slipping of "tongues of the notch under the pry tab." *Schock*, Col. 5, lines 46-50. Therefore, as with *Jamieson* ('830), Applicant respectfully asserts that because the identical invention is not shown, neither *Morris* ('942) nor *Shock* ('853) anticipates Applicant's device. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989) ("The identical invention must be shown in as complete detail as is contained in the...claim.")

Applicant has amended Independent Claim 1 to clarify and more succinctly define that Applicant's previously described "receiving

port" is more aptly a "framing member" that is positioned proximate to the "exterior edges of an opened flip-top can tab," thereby enabling "framing" of a vertically extended flip-top, in lieu of slidable engagement with any portion underneath the tab, as described by Examiner's references. Further, because Independent Claim 5 already includes the limitation that the area of a defined notch in the device top is "at least slightly greater than the width of the can pull-tab," it remains distinguished from *Morris* ('942) and *Shock* ('853) because such a dimension is not described, and moreover, if the cited "tab receiving port 30" of *Morris* ('942) or the "notch 55" of *Shock* ('853) were of such a dimension, neither would function as intended.

As noted previously, because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. V. Union Oil co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), and because neither *Morris* ('942) nor *Shock* ('853) describe each and every element of Applicant's device, specifically, a tab framing member for surrounding, and not engaging underneath a can pull tab, Applicant believes that Applicant's Independent Claims 1 and 5, as amended, are distinguished.

Examiner has also rejected Claims 1-2 and 5-6 under 35 U.S.C.

\$ 103(a) as being unpatentable over *Bartz* (6,722,518) in view of *Shock* ('853). In response, Applicant has amended independent Claim 1, as explained above, and respectfully traverses Examiners rejection.

As discussed above with reference to *Morris* ('942) and *Schock* ('853), and also applicable to *Bartz* ('518), each of the cited references teach a can sealing member that includes a tab receiving port that must slide underneath a can pull tab. None, however, teach or suggest including a tab receiving port that does not engage the pull tab, but instead frames the pull tab, thereby enabling installation during a wider range of circumstances. Again, "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art," *In re Royka*, 490 F.2d 981 (CCPA 1974), thus, Applicant respectfully asserts that the remaining Independent Claims 1 and 5 are not obvious. Further, because "[i]f an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious," *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1985), remaining dependent Claims 2 and 6 are also not obvious.

"A different situation exists where the solution is obvious from prior art which contains the same solution for a similar problem," *In re Wiseman*, 596 F.2d 1019, 1022 (CCPA 1979) (emphasis

in original); however, such is not the case with the references cited. Again, none of the cited references suggest the desirability of tab port, or cutout, capable of surrounding or framing the pull tab, enabling placement of the cover independent of any relationship with the pull tab. None of the references seek a solution to a similar problem, that is, the inability to seal an opened can with the pull-tab in a vertical orientation relative to the can lid surface, or with the pull-tab completely removed. Further, none of the references offer any possible solution to Applicant's defined problem.

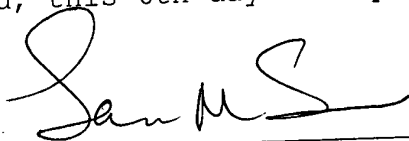
"The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Even if *Bartz* ('518) and *Shock* ('853) are combined, one does not arrive at Applicant's invention. Moreover, modifying any of the references to include a port or notch having a peripheral dimension greater than that of a can pull tab would change the principle of operation of each of the inventions described. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810 (CCPA 1959).

Applicant believes that the foregoing amendments and arguments distinguish the claims over the prior art and establish that Applicant's claimed invention is novel and non-obvious, thereby placing the rejected independent claims 1 and 5 and all remaining depending claims in condition for allowance.

CONCLUSION

The above-made amendments are to form only and thus, no new matter was added. Applicant respectfully believes that the above-made amendments now place the Claims and application in condition for allowance. Should the Examiner have any further questions and/or comments, Examiner is invited to telephone Applicant's undersigned Attorney at the number below.

Respectfully submitted, this 6th day of September, 2005.



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Sandra M. Sovinski, Esq.  
Reg. No. 45,781

MYERS & KAPLAN,  
INTELLECTUAL PROPERTY LAW, L.L.C.  
1899 Powers Ferry Road  
Suite 310  
Atlanta, GA 30339  
(770) 541-7444  
(770) 541-7448 facsimile  
ssovinski@mkiplaw.com -- Email  
Attorney Docket Number: 25980-RA